IN THE HIGH COURT OF BOMBAY AT GOA
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FIRST APPEAL NOS.57 OF 1998 & 43 OF 2000

FIRST APPEAL NO.57 OF 1998

1. State of Goa, through
the Dy. Collector (DEV)
& LAO, Panaji, Goa, 403 001, and

2. The Chief Town Planner,
Town & Country Planning Dept.,
Government of Goa,
Panaji, Goa 403 001. ... Appellants.

Versus

Smt. Juliet Elizabeth
Coutinho, r/o House no.167,
Ward no.7, Angod,
Mapusa, Goa. ... Respondent.

Shri H. R. Bharne, Government Advocate for the appellants.

Shri J. J. De Souza, advocate for the respondent.

FIRST APPEAL NO. 43 OF 2000

1. State of Goa, rep. by
Dy. Collector (Dev.) &
Land Acquisition Officer,
Panaji, Goa, and

2. The Chief Town Planner,
Town & Country Planning Dept.,
Panaji, Goa. ... Appellants.

Versus

Shri Anant Mahadev Karapurkar,
(deceased) represented by his
Legal Representatives:-

1a) Mandakini Anant Karapurkar
(dead),

1b) Sujata B. Khanolkar,

1c) Bhaskarrao V. Khanolkar,

ld) Anupama Avinash Vaigankar,

1e) Avinash A. Karapurkar,

1f) Premnath Anant Karapurkar,

1g) Pratima P. Karapurkar,

1h) Dayanand A. Karapurkar,

1i) Dayana D. Karapurkar,

1j) Nilima Devidas Karapurkar,

1k) Chandan D. Karapurkar,

1l) Kavita D. Karapurkar,

1m) Reema Karapurkar,

1n) Reenal Karapurkar,
all r/o Keunem,
Taleigao, Taluka
Tiswadi, Goa. ... Respondents.

Shri H. R. Bharne, Government Advocate for the appellants.

Shri R. G. Ramani, advocate for respondent nos.1(m) and 1(n).

CORAM : S. A. BOBDE, J.

DATE : 29th July, 2004.

ORAL JUDGMENT

These two First Appeals can be conveniently disposed of together since they relate to adjacent pieces of land and since the basis for enhancing the compensation by the Reference Court is almost the same.

2. The Appeals involve the enhancement of compensation in respect of two adjacent plots being plot no. 21 and 27, situated on the Panaji-Miramar road; closer to Miramar.

3. The Notification under Section 4 was published on 18th February, 1982, and declared that the acquisition was

necessary for parks and recreational purposes.

FIRST APPEAL NO 57 OF 1998

4. In this Appeal, the State has questioned the enhancement of compensation made by the Reference Court under Section 18 of the Land Acquisition Act, 1894. It involves acquisition of 600 sq. mts. of land.

5. The Land Acquisition Officer offered compensation at the rate of Rs.250/- per sq. mt. Dis-satisfied with this rate the respondent sought a reference. After hearing the evidence and taking into account the documentary evidence placed on record, the Reference Court enhanced the rate of compensation from 250/- per sq. mt. to Rs.313.50 per sq. mt. The State has questioned the enhancement in this Appeal. At the outset it must be noted that the rate has been enhanced on the basis of an Award A.W.4/B, which was in respect of land acquired by the State only 150 mts. away from the land in question. In that case, the Reference Court granted compensation at the rate of Rs.285/- per sq. mt. in L.A.C. No. 115/90 decided on 7th August, 1995. In this case the respondent examined five witnesses which included an approved valuer. These witnesses produced several documents on record, including the Award of the Reference Court in L.A.C. No.115/90 referred to above,

i.e. A.W.4/B and certain sale instances. Keeping the other evidence aside, it would be sufficient if one takes into account the consequences of the Award A.W.4/B, since it is that Award which has been taken into account by the Reference Court.

6. As stated above, the land which is the subject-matter of this Award is situated 150 mts. away from the present land. It is thus in the same locality. The difference is that the present land abuts the Dayanand Bandodkar Marg. There is no dispute about this either. Having regard to this fact the Reference Court has granted an increase of 5% over the rate of Rs.285/- per sq. mt. granted under A.W.4/B.

7. Shri Bharne, learned Government Advocate however, submitted that the compensation offered by the Land Acquisition Officer at the rate of Rs.250/- per sq. mt. should be maintained and the enhancement should be set aside completely. According to the learned counsel, this is due to the fact that there is evidence on record that the self-same land was purchased in the year 1997 by the respondent for Rs.55/- per sq. mt. Therefore, according to the learned counsel, the enhancement could have been made at the usual rate of 10% per year. However, this would fall short of the rate offered by the Land Acquisition Officer. Therefore, at least the rate offered by the Land Acquisition Officer should

be maintained. The learned counsel relied on the settled proposition of law that where there is evidence of the purchase of the self-same land, the rate at which the land was purchased by the owner should be taken into account. The learned counsel relied on the decision of the Supreme Court in **V. M. Salgaocar & Brother Ltd. vs. Union of India**, (1995)2 SCC 302 and **Shakuntalabai (Smt.) & Ors. vs. State of Maharashtra**, (1996)2 SCC 152. There is no doubt about this proposition, but it is important to note that in these cases Their Lordships have not fixed the multiplier which should be applied to the rate of which the owner had himself purchased the land. Therefore, the question is what would be a realistic rate at which the rates of land in question should be enhanced. Shri J. D'Souza, the learned counsel for the respondent relied on a decision of the Supreme Court in **Printers House Pvt. Ltd. vs. Mst. Saiyadan (Deceased) by L.Rs. & Ors.**, (1994)2 SCC 133, where the Supreme Court also held that the best evidence for determining the market value of the acquired land would be an authentic transaction of sale relating to the very acquired land. In doing so, Their Lordships observed as follows:-

> "What applies to comparable sale, equally applies to comparable award, if such award is relied upon as that furnishing a price basis for determination of the market value of the land, cannot be disputed. Thus, the best evidence for determining the market value of the acquired land could be an authentic transaction of sale relating to the very acquired land or a portion thereof or any land which could be favourably compared with the acquired land. The same would

be the position when the available evidence relates to land covered by a previous award."

8. It is therefore clear that one can take into account an authentic transaction of the sale of the very acquired land or an instance of a similar land covered by a previous Award. I am, therefore, of the view that in order to arrive at a fair market value in such a case, it would be appropriate to take into account the value of the self-same land at which the owner acquired it and enhance the rate with reference to compensation granted in respect of a comparable land at the time of Section 4 Notification. If this principle is applied, it would be clear that though the land was purchased in the year 1977 at the rate of Rs.55/- per sq. mt., it could be safely assumed that its value had enhanced by about 5.2 times to about Rs.285/- per sq. mt., i.e. the rate at which compensation was awarded in L.A.C. No.115/90. This would be a realistic approach to the situation, particularly in view of the fact that in the present case the award in L.A.C. no. 115/90 was in respect of another plot from the same piece of land which was further away from the road than the present land. Thus, I am of the view that the enhancement in the present case is justified and the First Appeal No. 57/98 deserves to be dismissed.

FIRST APPEAL NO. 43 OF 2000

9. This Appeal relates to land in plot no.27 which is about 60 mts. away from plot no.21, which was the

subject-matter of the earlier appeal. The area of this land is 548 sq.mts. The Land Acquisition Officer offered compensation at the rate of Rs.250/- per sq. mt. The Reference Court enhanced it to Rs.300/- per sq. mt.

10. In enhancing the compensation the Reference Court relied on the same Award relied upon in the earlier case, i.e. the Award in L.A.C. No.115/90. As observed earlier, in that case the Reference Court had enhanced the compensation to the rate of Rs.285/- per sq. mt. In this case, the learned Government Advocate reiterated the submission made by him in regard to the Award in L.A.C. no.115/90. The learned counsel submitted that the sale deed in regard to the land which was the subject-matter of L.A.C. No.115/90 was dated 26th April, 1982 and, therefore, must be treated as post-notification. However, in this regard it is clear from the Award in L.A.C. No.115/90, which is produced at Exh.44 and forms part of the paper book, that the sale deed dated 26th April, 1982, was preceded by an agreement dated 3rd October, 1980. Thus, it is clear that the rate of the sale deed i.e. Rs.257.94 per sq. mt. was fixed prior to the Notification and can be treated as a fair market value of the fair market price. Adverting to the Award against which the present appeal is filed, the Reference Court has carefully considered the deposition of the five witnesses examined by the respondent and also the evidence of one A.U. Korgaokar, Assistant Town Planner, who is examined as R.W.1. While

perusing the various agreements and sale instances brought on record, the learned Reference Court has selected A.W.2/C i.e. Agreement dated 3rd October, 1980, which led to the sale deed dated 26th April, 1982. This sale instance has been taken into account since it was most proximate in time and distance as compared to land while deciding L.A.C. No.115/90 and granted compensation at the rate of Rs.285/- per sq. mt.

11. The Reference Court has taken into account the aforesaid Award finding the same to be of a comparable land. The Reference Court has observed that the said Award pertains to the same developments carried out by the same party and that they are in respect of plots which are similar to the acquired land. Since the acquired land was situated at a distance of 60 mts. from the Dayanand Bandodkar Marg and was abutted on two sides by roads and on one side by open space, the land was considered to be partly developed. Having regard to the fact that the land was not abutting the Dayanand Bandodkar Marg the Reference Court has enhanced the rate from Rs.285/- per sq. mt. to Rs.300/- per sq. mt., on the basis of the evidence of A.W.3, the valuer.

12. It must be noted that the Reference Court has granted compensation at the rate of Rs.313/- per sq. mt. for the adjacent plot which abuts the main road. Thus, I am of the opinion that the Reference Court has not committed any error either in appreciation of evidence or in applying the

correct principles.

13. In the result, I find no merit in the appeals which are hereby dismissed.

S.A. BOBDE, J.

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